

I. Remarks

Claims 1, 3, and 5-22 are pending in this case. Of these, claims 1 and 22 are independent. All of these claims stand rejected as being anticipated under by, or in the alternative obvious over, the teaching of Akaishi, U.S. Pat. No. 6,642,162 B2. Respecting the anticipation rejection, the examiner contends that the indicated claims are not novel over the '162 reference under Sections 102(a) and (b). According to the examiner, the Akaishi patent is prior art under the foregoing statutory sections by reason of the "foreign priority date." For the following reasons, Applicants respectfully disagree.

*A. Akaishi is Unavailable as a Reference*

35 U.S.C. Sections 102(a) and (b) provide that "[a] person shall be entitled to a patent unless...

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date if the application for patent in the United States...."

In this instance, Akaishi '164 was issued on November 4, 2003, on an application filed November 21, 2001. That U.S. application, which claims priority to JP 2000-374671, filed December 8, 2000, was published on October 3, 2002 (Publication No. 2002/0142911 A1). As apparently reflected in the cover page of Exhibit A, attached, JP 2000-374671 was not published until June 26, 2002.

The instant application, by contrast, was filed October 22, 2001, as a continuation of prior U.S. application Serial No. 09/402,032, filed September 24, 1999. Moreover, these applications both claim priority to PCT application PCT/EP98/01485, filed March

13, 1998, which application in turn claims priority to German application Serial No. 197 12 835.1, filed March 26, 1997.

Clearly, the Akaishi reference does not constitute prior art under either of Sections 102(a) or (b): The earliest apparent publication date for either of the JP or US applications is in 2002, while the patenting date of the US application was only November of 2003. *None* of these dates meet the requirements of Section 102(a) that the invention be patented or described in a printed publication before the invention thereof by the applicant for patent, or the requirements of Section 102(b) that the invention be patented or described in a printed publication more than one year prior to the applicant's U.S. filing date.

As to the unmentioned Section 102(e), the same is equally inapplicable in this instance, inasmuch as the U.S. filing date of the Akaishi patent was *after* the filing date of the instant application.<sup>1</sup>

*B. Akaishi and Applicants Do Not Claim the Same Patentable Invention*

Turning then to the examiner's alternative contention that an interference is appropriate if the Akaishi patent is unavailable as prior art, Applicants respectfully disagrees.

The instant inventive article and process are most broadly claimed as follows:

“A molded body from a lightweight substance formed from a lightweight aggregate and a sintering auxiliary, comprising:  
a sintered product obtained by mixing a lightweight substance of 80 to 93 wt% of a lightweight aggregate, selected from the group consisting of expanded glass, scrap glass, and their mixtures with 20 to 7 wt% of an aqueous alkali

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<sup>1</sup> Applicant further notes that the filing date of JP 2000-374671 is immaterial to Section 102(e), as that statute provides recognition of “foreign” priority only as to PCT applications (and even then only in limited circumstances).

silicate solution, where the lightweight aggregate is bonded in a network structure exclusively at the contact sites to obtain its essential properties, wherein the molded body has a dry bulk density and that dry bulk density lies in the range from 150 to 750 kg/m<sup>3</sup>. (Claim 1.)

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A process for the production of a molded body from a lightweight substance formed from a lightweight aggregate and a sintering auxiliary, the process comprising the steps of:

obtaining a sintered product by mixing a lightweight substance of 80 to 93 wt% of a lightweight aggregate selected from the group consisting of expanded glass, scrap glass, and their mixtures with 20 to 7 wt% of an aqueous alkali silicate solution, where the lightweight aggregate is bonded in a network structure exclusively at the contact sites to obtain its essential properties, wherein the molded body has a dry bulk density and that dry bulk density lies in the range from 150 to 750 kg/m<sup>3</sup>." Claim 22.

In contrast, the Akaishi '164 patent claims the following:

"A lightweight heat-insulating building material having frost resistance comprising: a mixture of raw materials containing glass powder, 0.3-10 wt% carbonate or 0.1 to 5 wt% aluminum metal as a foaming agent, 1-10 wt%, expressed as sodium silicate, of a crystallization inhibitor of at least one material selected from the group consisting of boric acid, borax and Na<sub>2</sub>SO<sub>4</sub>·10H<sub>2</sub>O, and 0.5-30 wt% of a frost inhibitor containing calcium silicate, said mixture being molded and fired to form a molded body." Claim 1.

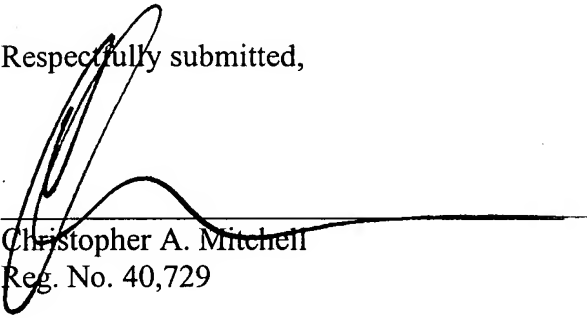
Respectfully, the foregoing invention of the Akaishi '164 patent is unquestionably not the "same patentable invention," within the meaning of 37 C.F.R. Section 1.601(n), as the instantly claimed invention. Consequently, invocation of an interference is unwarranted.

Should the examiner disagree with Applicants' position in these regards, he is invited to articulate just how the foregoing claims concern the "same patentable invention" within the meaning of the relevant regulations.

### III. Conclusion

In view of the above, Applicants submit that the claims stand in condition for immediate allowance. Of course, the examiner is invited to contact Applicants' undersigned counsel at (734) 662-0270 if he should have any questions respecting this paper, or if a telephone interview might otherwise expedite the prosecution of this case.

Respectfully submitted,



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DATED: January 26, 2004

(19) 日本国特許庁 (J P)

(12) 公開特許公報 (A)

(11) 特許出願公開番号  
特開2002-179476  
(P2002-179476A)

(43) 公開日 平成14年6月26日 (2002.6.26)

(51) Int.Cl.<sup>7</sup>  
C 0 4 B 38/02

識別記号

F I  
C 0 4 B 38/02

データベース\* (参考)  
M  
N

審査請求 未請求 請求項の数 8 O L (全 6 頁)

(21) 出願番号 特願2000-374671 (P2000-374671)

(22) 出願日 平成12年12月8日 (2000.12.8)

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(54) 【発明の名称】 耐凍害性軽量断熱建材

(57) 【要約】

【課題】 耐凍害性に著しく優れかつ安価な軽量断熱建材を提供する。

【解決手段】 ガラス粉、発泡剤、結晶化防止剤及び凍害防止剤を含む原料混合物を成型し、得られた成型体を焼成により発泡させてなる耐凍害性軽量断熱建材。

